

AG Contract No.: KR04-0554TRN
ADOT ECS File: JPA 04-041
Project No.: HRF-NNA-0-802
Project: Concho Road
TRACS No.: HF102 01C
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
NAVAJO COUNTY

THIS AGREEMENT is entered into 7th June, 2004, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and NAVAJO COUNTY, ARIZONA, acting by and through its Board of Supervisors (the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes § 11-251 § 11-951 and to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the County.

3. The State has approved the exchange of \$166,971.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2004 to the County for the construction of roadway improvements to Concho Road, and such funds will be repaid to the State by withholding from the Northern Arizona Council of Governments (NACOG) federal funds and the obligation authority for federal funds in the amount of \$173,202.00 in Fiscal Year 2004.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26873
Filed with the Secretary of State
Date Filed: 06/07/04

Janice K. Brewer
Secretary of State

By: Darryl Haeneuwald

II. SCOPE OF WORK

1. The County will:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project, and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the project construction cost, at the start of construction.

d. Invoice the State for thirty percent of the project construction cost, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the project construction cost at the one hundred percent project construction completion stage, after the County, NACOG, and the State (ADOT) representatives have completed final project review.

2. The State will:

a. Within 30 days after receipt and approval of an invoice, pay for thirty percent of the project construction cost at the start of construction, and for thirty percent of the project construction cost at the thirty percent project construction completion stage, and for thirty percent of the project construction cost at the sixty percent project construction completion stage, and pay ten percent upon completion of construction.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The County shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The County shall also require its contractors to name the State and ADOT as an additional indemnitee in the County's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the County and that to the extent permitted by law, the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. This terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the County, the State shall in no way be obligated to maintain said project

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

Navajo County
Deputy Director, Engineering
P O Box 668
Holbrook, Arizona 86025

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

NAVAJO COUNTY**STATE OF ARIZONA**

Department of Transportation

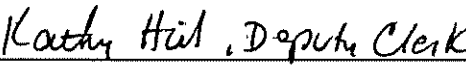
By 
J. R. DeSPAIN, Chairman
Board of Supervisors

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

Date 5/17/04

Date _____

ATTEST

By 
JUDY JONES
Clerk of the Board

Date 5/17/04

RESOLUTION NO SO -04

**A RESOLUTION OF THE NAVAJO COUNTY BOARD OF
SUPERVISORS, APPROVING AND AUTHORIZING THE
CHAIRMAN TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH THE STATE OF ARIZONA
FOR IMPROVEMENTS TO CONCHO ROAD
(ADOT PROJECT NO. HRF-NNA-0-802).**

WHEREAS, the Public Works Department has recommended approval of the attached Intergovernmental Agreement (IGA) with the State of Arizona, Department of Transportation, providing for the exchange of \$166,971 in Highway User Revenue Funds in Fiscal Year 2004 to Navajo County for the construction of roadway improvements to Concho Road, such funds to be repaid to the State by withholding from the Northern Arizona Council of Governments federal funds in the amount of \$166,971 in Fiscal Year 2004; and

WHEREAS, the County Attorney's Office has reviewed and approved said IGA as being in the proper form and within the scope of authority of the Board of Supervisors; and

WHEREAS, the Board of Supervisors finds that said IGA is in the best interests of Navajo County and should be approved, subject to any conditions and contingencies set forth therein,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors that the Chairman is hereby authorized to execute said IGA on behalf of Navajo County.

PASSED, APPROVED AND ADOPTED at Holbrook, Arizona on May 17, 2004.

NAVAJO COUNTY BOARD OF SUPERVISORS

By J. R. Despain
J. R. Despain,
Chairman of the Board

ATTEST:

Kathy Hill, Deputy Clerk
Judy Jones, Clerk of the Board

Approval as to Form and Authority

The undersigned, as legal counsel to Navajo County, has determined that the foregoing Intergovernmental Agreement between the State of Arizona and Navajo County relating to a HURF Exchange Program for certain improvements to Concho Road is in the proper form and within the scope of authority of the Navajo County Board of Supervisors so as to constitute a binding obligation of Navajo County.

Dated May 17, 2004.

NAVAJO COUNTY ATTORNEY'S OFFICE

By


A handwritten signature in cursive script, reading "Lance B. Payette", written over a horizontal line.

Lance B. Payette
Chief Deputy County Attorney

APPROVAL OF THE NAVAJO COUNTY ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the NAVAJO COUNTY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the COUNTY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 17TH day of May, 2004.


for County Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TERRY GODDARD
ATTORNEY GENERAL

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-0554TRN (**JPA 04-041**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 1, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan E. Davis".

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section